

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

LAWRENCE LANE, On Behalf of Himself
and All Other Similarly Situated,

Plaintiff,

VS.

BARBARA PAGE, et al.,

Defendants.

No. Civ-06-1071-JB-ACT

PURPORTED CLASS ACTION

REPLY IN SUPPORT OF
MOTION TO DISMISS and
JOINDER IN DIRECTOR
DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO
DISMISS

Defendants Westland Development Company, Inc. (“Westland”) and Suncal Companies Group (“Suncal”) join in the Reply in Support of Motion to Dismiss filed by the Director Defendants (“Dir. Def. Reply”). Westland and Suncal adopted and incorporated each ground for dismissal in the Director Defendants’ Motion to Dismiss and also now join in each argument they make in their Reply in Support of Motion to Dismiss.

In addition, with respect to Suncal, Plaintiff’s Response admits that the only factual allegation against Suncal that may establish liability under Section 14(a) is that Suncal was a participant in proxy solicitation. (Pls Response at 15 n. 21). Suncal does not dispute it was a participant in proxy solicitation, but that is not enough to establish 14(a) liability. As the Director Defendants point out in their Motion and Reply, Plaintiff cannot rely on group pleading to establish 14(a) liability. (Dir Def. Mot. at Section IV; Reply at Section II) Instead, Plaintiff must allege with particularity the facts that establish liability as to each Defendant and Plaintiff has made no effort whatsoever to do this with respect to Suncal.¹

CONCLUSION

For the reasons stated above and for the reasons stated in the Director Defendants’ Motion to Dismiss and Reply in Support, the Amended Complaint should be dismissed in its entirety with prejudice.

¹ Plaintiff also contends that Suncal does not challenge its status as control person and has thus waived the argument. (Response at 23 n. 26). Suncal in its Joinder argued that the Section 20(a) claim must be dismissed because the Section 14(a) claim should be dismissed (Joinder at 2; *see also* Dir. Def. Mot. at Section VII; Reply at Section V). Thus, Suncal does challenge its status as a control person on this ground only. Suncal, however, does not make the alternative argument at this time that the one paragraph of allegations in Plaintiff’s Amended Complaint (paragraph 67) are not enough to establish control person liability if Plaintiff has sufficiently pled a Section 14(a) claim. While it does not make this argument at this time, Suncal reserves the right to make such an argument later in this case if the case survives the motion to dismiss.

DATED: March 18, 2007

Respectfully submitted,

/s/

Douglas G. Schneebeck
Modrall Sperling Roehl Harris & Sisk, P.A.
P.O. Box 2168
Albuquerque, NM 87103-2168
505.848.1800 phone; 505.848.1882 fax
ATTORNEYS FOR DEFENDANTS SUNCAL
And WESTLAND

And

Greg Weselka, Esq.
Evan P. Singer, Esq.
JONES DAY
2727 N. Harwood St.
Dallas, Texas 75201
(214) 220-3939 phone; (214) 969-5100 fax

ATTORNEYS FOR DEFENDANT SUNCAL

CERTIFICATE OF SERVICE

We certify that on the 18th day of March, 2008, we filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Luis Stelzner, Esq.
Juan Flores, Esq.
SHEEHAN, SHEEHAN & STELZNER, P.A.
707 Broadway, N.E., Suite 300
Albuquerque, New Mexico 87103
(505) 247-0411 (phone)

Jesse Z. Weiss, Esq.
Kimberly G. Davis, Esq.
Paul R. Bessette, Esq.
Yusuf A. Bajwa, Esq.
Akin Gump
300 W. 6th Street, Suite 2100
Austin, Texas 78701
512.499.6204 (phone)

ATTORNEYS FOR DEFENDANTS BARBARA PAGE, SOSIMO S. PADILLA, JOE S. CHAVEZ, JOSIE CASTILLO, CHARLES V. PENA, GEORGIA BACA, TROY K. BENAVIDEZ, RAY MARES, JR., AND RANDOLPH M. SANCHEZ

Richard A. Sandoval, Esq.
Branch Law Firm
2025 Rio Grande Blvd. N.W.
Albuquerque, NM 87104
505.243.3500 (telephone) ; 505.243.3534 (fax)

ATTORNEYS FOR FRANK MARTIN

Nicholas Koluncich III, Esq.
LAW OFFICES OF NICHOLAS KOLUNCICH III, LLC
6501 Americas Parkway NE
One Park Square – Suite 620
Albuquerque, NM 87107-5375
(505) 881-2228 (phone); (505) 881-4288 (fax)

Darren J. Robbins, Esq.
Randall J. Baron, Esq.
Amber L. Eck, Esq.
LERACH COUGHLIN STOIA
GELLER RUDMAN & ROBBINS, LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
(619) 231-1058 (phone);(619) 231-7423 (fax)

Joe Kendall, Esq.
PROVOST UMPHREY LAW FIRM, LLP
3232 McKinney Avenue, Suite 700
Dallas, Texas 75205
(214) 744-3000 (phone); (214) 744-3015 (fax)

ATTORNEYS FOR PLAINTIFF LAWRENCE LANE

/s/
Douglas G. Schneebeck